

AMENDED IN SENATE JULY 2, 2014
AMENDED IN SENATE AUGUST 12, 2013
AMENDED IN SENATE JULY 11, 2013
AMENDED IN SENATE JUNE 27, 2013
AMENDED IN SENATE JUNE 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 69

Introduced by Assembly Member Perea
(~~Coauthor: Assembly Member Stone~~)
(Coauthors: Assembly Members Brown, Daly, Hall, Roger Hernández,
Rodriguez, and Salas)
(Coauthors: Senators Correa and Torres)

January 10, 2013

An act to add ~~Article 6.5 (commencing with Section 14615) to Chapter 5 of Division 7 of the Food and Agricultural Code, and to add and repeal Chapter 4.7 (commencing with Section 116765) of Part 12 of Division 104 of Section 38576 to the Health and Safety Code, relating to drinking water, making an appropriation therefor greenhouse gases, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 69, as amended, Perea. ~~Groundwater: drinking water: Nitrate at Risk Fund. California Global Warming Solutions Act of 2006: market-based compliance mechanisms: exemption.~~

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring

and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. The act authorizes the state board to include the use of market-based compliance mechanisms. Existing state board regulations require specified entities to comply with a market-based compliance mechanism beginning January 1, 2013, and require additional specified entities to comply with that market-based compliance mechanism beginning January 1, 2015.

This bill instead would exempt categories of persons or entities that did not have a compliance obligation, as defined, under a market-based compliance mechanism beginning January 1, 2013, from being subject to that market-based compliance mechanism beginning January 1, 2015, and until December 31, 2017. The bill would require all participating categories of persons or entities to have a compliance obligation beginning January 1, 2018.

This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.~~

~~This bill would establish the Nitrate at Risk Fund, to be administered by the department. This bill would continuously appropriate, without regard to fiscal years, the fund to the department for the purposes of loans, principal forgiveness loans, or grants to certain water systems operating in a high-nitrate at-risk area for specified purposes. This bill would require the state board, on or before January 1, 2022, to submit a report to the Legislature that includes specified information relating to the fund and contaminated drinking water. This bill would repeal these provisions on January 1, 2024.~~

~~(2) Existing law requires every person who manufactures or distributes fertilizing materials to be licensed by the Secretary of Food~~

and Agriculture and to pay a license fee that does not exceed \$300. Existing law requires every lot, parcel, or package of fertilizing material to have a label attached to it, as required by the secretary. Existing law requires a licensee who sells or distributes bulk fertilizing materials to pay to the secretary an assessment not to exceed \$0.002 per dollar of sales for all sales of fertilizing materials, as prescribed, for the purposes of the administration and enforcement of provisions relating to fertilizing materials. In addition to that assessment, existing law authorizes the secretary to impose an assessment in an amount not to exceed \$0.001 per dollar of sales for all sales of fertilizing materials for the purpose of providing funding for research and education regarding the use of fertilizing materials.

~~This bill, with prescribed exceptions, would require a person who sells for use in this state fertilizer materials to pay to the secretary a fertilizer materials charge, until January 1, 2016, of \$0.01 per dollar of materials. This bill, on and after January 1, 2016, would permit the department to increase the amount of the charge, as specified, to an amount no greater than \$0.04 per dollar of materials if 80% of the moneys in the fund are committed, and would require the Fertilizer Inspection Advisory Board to discuss the charge and provide a recommendation to the department. This bill would prohibit the fertilizer materials charge from being imposed when the department determines that more than \$60,000,000 of the moneys in the fund are uncommitted. This bill would require a seller of fertilizer materials to remit the charge to the secretary to be deposited in the fund.~~

~~(3) The bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$. Appropriation: ~~yes~~-no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The landmark California Global Warming Solutions Act of
- 4 2006 (Division 25.5 (commencing with Section 38500) of the
- 5 Health and Safety Code) set the goal of reducing greenhouse gas
- 6 emissions to 1990 levels by 2020. The act required the State Air
- 7 Resources Board to develop a scoping plan, including direct
- 8 regulations, performance-based standards, and market-based

1 mechanisms to achieve this level of greenhouse gas emissions
2 reductions.

3 (b) The State Air Resources Board has implemented a
4 market-based compliance mechanism under the California Global
5 Warming Solutions Act of 2006 (Division 25.5 (commencing with
6 Section 38500) of the Health and Safety Code).

7 (c) Beginning January 1, 2015, the State Air Resources Board's
8 market-based compliance mechanism will expand from covering
9 large industrial facilities to include carbon-based transportation
10 fuels used today by the state's motorists.

11 (d) Including transportation fuels in a market-based compliance
12 mechanism will require suppliers of transportation fuels to
13 purchase carbon allowances for gasoline and diesel sold and used
14 in the state, therefore, adding a carbon price to the cost of
15 transportation fuels.

16 (e) The State Air Resources Board's regulatory analysis for the
17 market-based compliance mechanism anticipates carbon allowance
18 costs ranging from \$15 to \$75, inclusive, per ton between 2015
19 and 2020.

20 (f) Including transportation fuels in a market-based compliance
21 mechanism will link the cost of gasoline and diesel to potentially
22 volatile carbon markets placing the state's motorists, families, and
23 small businesses at risk.

24 (g) Many areas of the state continue to struggle from
25 disproportionately high unemployment rates and the state's
26 hard-working low-income and middle-income families will likely
27 suffer most from this sudden addition in addition to potentially
28 volatile carbon costs on transportation fuels.

29 (h) Before including transportation fuels in a market-based
30 compliance mechanism, the State Air Resources Board must ensure
31 that the state's motorists, families, and small businesses are
32 prepared for this carbon price signal with sufficient notice,
33 information, and protection from certain and volatile cost increases
34 for their transportation fuels.

35 SEC. 2. Section 38576 is added to the Health and Safety Code,
36 to read:

37 38576. (a) For purposes of this section, "compliance
38 obligation" means the quantity of greenhouse gas emissions for
39 which a person or entity is required to submit greenhouse gas

1 *emissions allowances or offsets to the state board pursuant to a*
2 *market-based compliance mechanism.*

3 *(b) (1) If the state board adopts a market-based compliance*
4 *mechanism pursuant to this part, only those categories of persons*
5 *or entities that had a compliance obligation beginning January 1,*
6 *2013, and until December 31, 2014, shall have a compliance*
7 *obligation beginning January 1, 2015, and until December 31,*
8 *2017.*

9 *(2) Beginning January 1, 2018, all categories of persons or*
10 *entities participating in a market-based compliance mechanism*
11 *shall have a compliance obligation.*

12 *SEC. 3. This act is an urgency statute necessary for the*
13 *immediate preservation of the public peace, health, or safety within*
14 *the meaning of Article IV of the Constitution and shall go into*
15 *immediate effect. The facts constituting the necessity are:*

16 *To allow sufficient lead time to make necessary adjustments to*
17 *the program before it takes effect January 1, 2015, it is necessary*
18 *for this act to take effect immediately.*

19 ~~SECTION 1. Article 6.5 (commencing with Section 14615) is~~
20 ~~added to Chapter 5 of Division 7 of the Food and Agricultural~~
21 ~~Code, to read:~~

22
23 ~~Article 6.5. Nitrate at Risk Fund Charge~~
24

25 ~~14615. (a) For the purposes of this section, "fund" means the~~
26 ~~Nitrate at Risk Fund created by Section 116765 of the Health and~~
27 ~~Safety Code.~~

28 ~~(b) (1) Except as provided in subdivision (d), every person who~~
29 ~~sells for use in this state fertilizer materials shall pay to the~~
30 ~~secretary the applicable charge. Those sales expressly include all~~
31 ~~sales made electronically, telephonically, or by any other means~~
32 ~~that result in a fertilizer material being shipped to or used in the~~
33 ~~state. There is a rebuttable presumption that fertilizer materials~~
34 ~~that are sold or distributed into or within this state by any person~~
35 ~~are sold or distributed for use in this state. A fertilizer materials~~
36 ~~charge shall be paid at the following rates for sales of fertilizer~~
37 ~~materials for use in this state:~~

38 ~~(1) Until January 1, 2016, a charge of \$0.01 per dollar of~~
39 ~~materials sold.~~

~~(2) On and after January 1, 2016, the State Department of Public Health may increase the amount of the charge to an amount no greater than \$0.04 per dollar of materials sold if 80 percent of the moneys in the fund are committed. In determining the amount of the charge, the State Department of Public Health shall consider the demand for the moneys in the fund. In determining the charge, the State Department of Public Health shall allow stakeholder participation and make available to the public the information upon which the State Department of Public Health calculates, bases, or determines the charge. The Fertilizer Inspection Advisory Board, described in Section 14581, shall discuss the charge and provide a recommendation to the State Department of Public Health.~~

~~(2) A seller of fertilizer materials shall remit the fertilizer materials charge to the secretary to be deposited in the fund.~~

~~(e) The fertilizer materials charge shall not be imposed when more than sixty million dollars (\$60,000,000) of the moneys in the fund are uncommitted.~~

~~(d) A person is not required to pay the charge provided for in this section as follows:~~

~~(1) In those cases where the person did not first sell the fertilizer material into or within this state or have actual knowledge, at the time of its sale, that the fertilizer would be sold for use in this state.~~

~~(2) If the fertilizer material is for use in further manufacturing or formulating of fertilizer material.~~

~~SEC. 2. Chapter 4.7 (commencing with Section 116765) is added to Part 12 of Division 104 of the Health and Safety Code, to read:~~

~~CHAPTER 4.7. NITRATE AT RISK FUND~~

~~116765. The Nitrate at Risk Fund is hereby established in the State Treasury, to be administered by the State Department of Public Health. Notwithstanding Section 13340 of the Government Code, moneys in the Nitrate at Risk Fund are continuously appropriated, without regard to fiscal years, to the State Department of Public Health for the purposes described in Section 116766.~~

~~116766. (a) Moneys in the Nitrate at Risk Fund shall be used for loans, principal forgiveness loans, or grants to a water system operating in a high-nitrate at-risk area that is one of the following:~~

1 ~~(1) A small community water system serving a disadvantaged~~
2 ~~community.~~

3 ~~(2) An unregulated system of 2 to 15, inclusive, service~~
4 ~~connections.~~

5 ~~(3) A nontransient noncommunity water system owned by a~~
6 ~~public agency.~~

7 ~~(b) Moneys in the Nitrate at Risk Fund may be used for any of~~
8 ~~the following purposes:~~

9 ~~(1) Preplanning drinking water projects.~~

10 ~~(2) Planning drinking water projects.~~

11 ~~(3) Interim water solutions.~~

12 ~~(4) Constructing drinking water projects.~~

13 ~~(5) Operating and maintaining drinking water systems. The~~
14 ~~State Department of Public Health shall ensure that moneys used~~
15 ~~for the purposes of this paragraph are for the operation and~~
16 ~~maintenance of drinking water systems in communities that have~~
17 ~~a substantial need and otherwise would not be able to afford to~~
18 ~~operate or maintain their systems. The State Department of Public~~
19 ~~Health shall ensure that moneys available for the operation and~~
20 ~~maintenance of a particular drinking water system pursuant to this~~
21 ~~paragraph shall not be permanent and shall be phased out over~~
22 ~~time.~~

23 ~~(c) Moneys in the Nitrate at Risk Fund shall not be used for~~
24 ~~loans, principal forgiveness loans, or grants to a water system that~~
25 ~~is a small community water system for the purposes of either~~
26 ~~paragraph (2) or (4) of subdivision (b) unless no other funding~~
27 ~~source is available to that system for that purpose.~~

28 ~~116767. (a) On or before January 1, 2022, the state board, in~~
29 ~~consultation with any other state entity or research institution as~~
30 ~~appropriate, shall submit to the Legislature a report that includes~~
31 ~~all of the following information:~~

32 ~~(1) Communities that rely on contaminated drinking water as a~~
33 ~~primary source of drinking water.~~

34 ~~(2) The principal contaminants and other constituents of concern~~
35 ~~affecting groundwater and contamination levels in the groundwater~~
36 ~~sources for the communities described in paragraph (1).~~

37 ~~(3) Potential solutions and funding sources to clean up or treat~~
38 ~~groundwater or to provide alternative water supplies to ensure the~~
39 ~~provision of safe drinking water to communities identified in~~
40 ~~paragraph (1).~~

1 ~~(4) The effect of the use of the moneys in the Nitrate at Risk~~
2 ~~Fund for the purposes described in Section 116766 on nitrate~~
3 ~~contaminated groundwater used as a source of drinking water.~~

4 ~~(b) A report to be submitted pursuant to subdivision (a) shall~~
5 ~~be submitted in compliance with Section 9795 of the Government~~
6 ~~Code.~~

7 ~~116768. If the responsibility for administering Chapter 4~~
8 ~~(commencing with Section 116270) is transferred to the state board,~~
9 ~~the state board shall succeed to and is vested with all of the~~
10 ~~authority, duties, powers, responsibilities, and jurisdiction of the~~
11 ~~State Department of Public Health pursuant to this article.~~

12 ~~116769. This article shall remain in effect only until January~~
13 ~~1, 2024, and as of that date is repealed, unless a later enacted~~
14 ~~statute, that is enacted before January 1, 2024, deletes or extends~~
15 ~~that date.~~

16 ~~SEC. 3. This act is an urgency statute necessary for the~~
17 ~~immediate preservation of the public peace, health, or safety within~~
18 ~~the meaning of Article IV of the Constitution and shall go into~~
19 ~~immediate effect. The facts constituting the necessity are:~~

20 ~~To address the public health problem of nitrate-contaminated~~
21 ~~drinking water as soon as possible, it is necessary for this act to~~
22 ~~take effect immediately.~~